

The Honorable Michelle L. Peterson

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

O'DONNELL/SALVATORI, INC., an Illinois
corporation,

Plaintiff/Counterclaim
Defendant,

v.

MICROSOFT CORPORATION, a Washington
corporation,

Defendant/Counterclaim
Plaintiff.

NO. 2:20-cv-00882-MLP

**SUPPLEMENTAL DECLARATION OF
MARK LORBIECKI IN SUPPORT OF
ODS'S MOTION FOR SUMMARY
JUDGMENT RE: MICROSOFT'S
COUNTERCLAIM AND
DETERMINATION OF AUTHORSHIP
RIGHTS FOR MUSIC WORKS**

NOTED ON MOTION CALENDAR:

February 25, 2022

SUPPLEMENTAL DECLARATION OF MARK LORBIECKI IN
SUPPORT OF ODS'S MOTION FOR SUMMARY JUDGMENT RE:
MICROSOFT'S COUNTERCLAIM AND DETERMINATION OF
AUTHORSHIP RIGHTS FOR MUSIC WORKS - i
(2:20-cv-00882-MLP)

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1 1. I am an attorney for Plaintiff/Counterclaim Defendant O'Donnell/Salvatori, Inc.
2 ("ODS") in the above-entitled action. I make this declaration based on personal knowledge, am
3 over the age of 18 and competent to testify.

4 2. Attached hereto as Exhibit 6 is a true and correct copy of a spreadsheet reflecting
5 known composers for Halo music and the actual registrations or failure to register various works,
6 either in their proper name or at all. Microsoft has waived confidentiality relative to this
7 document.

8 3. Attached hereto as Exhibit 7 is a true and correct copy of excerpts of the 30(b)(5)
9 deposition of Microsoft as testified to by Christopher Hull, especially depicting the process of
10 registering a work with ASCAP. Microsoft has waived confidentiality relative to this document.

11 4. Attached hereto as Exhibit 8 is a true and correct copy of excerpts of the 30(b)(5)
12 deposition of Microsoft as testified to by Jonathan Segal, especially depicting the process of
13 registering a work with ASCAP. Microsoft has waived confidentiality relative to this document.

14 5. Attached hereto as Exhibit 9 is a true and correct copy of excerpts of the
15 deposition of Paul Lipson especially depicting the process of registering a work with ASCAP.
16 Microsoft has waived confidentiality relative to this document.

17 6. Attached hereto as Exhibit 10 is a true and correct copy of an email chain relating
18 to the exploration of ODS rights in works and the registration with ASCAP. Microsoft has
19 waived confidentiality relative to this document.

20 7. Attached hereto as Exhibit 11 is a true and correct copy of an email chain wherein
21 Microsoft's expressed its intent not to perform registration with ASCAP. Microsoft has waived
22 confidentiality relative to this document.

23 8. Attached hereto as Exhibit 12 is a true and correct copy of an email chain wherein
24 discussing Attorney Jim Charne's objection on behalf of ODS to Microsoft's expressed intent

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1 not to perform registration with ASCAP. Microsoft has waived confidentiality relative to this
2 document.

3 9. Attached hereto as Exhibit 13 is a true and correct copy of an email chain wherein
4 is further discussion of Microsoft expressed its intent not to perform registration with ASCAP.
5 Microsoft has waived confidentiality relative to this document.

6 10. Attached hereto as Exhibit 14 is a true and correct copy of an email chain wherein
7 Microsoft grants its license without royalty to ODS composition. Microsoft has waived
8 confidentiality relative to this document.

9 11. Attached hereto as Exhibit 15 is a true and correct copy of an email chain wherein
10 Microsoft expresses its own position that because Microsoft owns the work, there is no
11 entitlement to royalties. Microsoft has waived confidentiality relative to this document.

12 12. Attached hereto as Exhibit 16 is a true and correct copy of an email chain wherein
13 Microsoft elects not to enforce copyright claims in the form of takedown demands. Microsoft
14 has waived confidentiality relative to this document.

15 13. Attached hereto as Exhibit 17 is a true and correct copy of an email chain wherein
16 Microsoft grants its license without royalty to ODS composition. Microsoft has waived
17 confidentiality relative to this document.

18 14. Attached hereto as Exhibit 18 is a true and correct copy of an email chain wherein
19 Microsoft's contractor expresses its unwillingness to register with ASCAP, BMI, or PRO.
20 Microsoft has waived confidentiality relative to this document.

21 15. Attached hereto as Exhibit 19 is a true and correct copy of an email chain wherein
22 Microsoft determines that it will only pay on invoices by ODS rather than based upon actual uses
23 by Microsoft. Microsoft has waived confidentiality relative to this document.

24
25 SUPPLEMENTAL DECLARATION OF MARK LORBIECKI IN
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16. Attached hereto as Exhibit 20 is a true and correct copy of an email chain between Microsoft and ODS' attorneys to address nonpayment of various royalties and nonregistration with ASCAP. Microsoft has waived confidentiality relative to this document.

17. THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, SO STATED UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON AND THE UNITED STATES OF AMERICA.

DATED this 31st day of January 2022.

s/ Mark Lawrence Lorbiecki
 Mark Lawrence Lorbiecki, WSBA # 16796
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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such filing to all CM/ECF participants.

DATED this 31st day of January 2022.

s/ Mark Lawrence Lorbiecki
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